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country under subsection (b). So Oklahoma lacks jurisdiction to prosecute Mr. McGirt whether the Creek lands happen to fall in one category or another.

About this, Oklahoma is at least candid. It admits the entire point of its reclassification exercise is to avoid *Solem*'s rule that only Congress may disestablish a reservation. And to achieve that, the State has to persuade us not only that the Creek lands constitute a "dependent Indian community" rather than a reservation. It *also* has to convince us that we should announce a rule that dependent Indian community status can be lost more easily than reservation status, maybe even by the happenstance of shifting demographics.

To answer this argument, it's enough to address its first essential premise. Holding that the Creek never had a reservation would require us to stand willfully blind before a host of federal statutes. Perhaps that is why the Solicitor General, who supports Oklahoma's disestablishment argument, refuses to endorse this alternative effort. It also may be why Oklahoma introduced this argument for affirmance only for the first time in this Court. And it may be why the dissent makes no attempt to defend Oklahoma here. What are we to make of the federal government's repeated treaty promises that the land would be "solemnly guarantied to the Creek Indians," that it would be a "permanent home," "forever set apart," in which the Creek would be "secured in the unrestricted right of self-government"? What about Congress's repeated references to a "Creek reservation" in its statutes? No one doubts that this kind of language normally suffices to establish a federal reservation. So what could possibly make this case different?

Oklahoma's answer only gets more surprising. *The* reason that the Creek's lands are not a reservation, we're told, is that the Creek Nation originally held fee title. Recall that the Indian Removal Act authorized the President not only to "solemnly . . . assure the tribe . . . that the United States

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will forever secure and guaranty to them . . . the country so exchanged with them,” but also, “if they prefer it, . . . the United States will cause a patent or grant to be made and executed to them for the same.” 4 Stat. 412. Recall that the Creek insisted on this additional protection when negotiating the Treaty of 1833, and in fact received a land patent pursuant to that treaty some 19 years later. In the eyes of Oklahoma, the Tribe’s choice on this score was a fateful one. By asking for (and receiving) fee title to their lands, the Creek inadvertently made their tribal sovereignty easier to divest rather than harder.

The core of Oklahoma’s argument is that a reservation must be land “reserved from sale.” *Celestine*, 215 U. S., at 285. Often, that condition is satisfied when the federal government promises to hold aside a particular piece of federally owned land in trust for the benefit of the Tribe. And, admittedly, the Creek’s arrangement was different, because the Tribe held “fee simple title, not the usual Indian right of occupancy.” *United States v. Creek Nation*, 295 U. S. 103, 109 (1935). Still, as we explained in Part II, the land *was* reserved from sale in the very real sense that the government could not “give the tribal lands to others, or to appropriate them to its own purposes,” without engaging in “an act of confiscation.” *Id.*, at 110.

It’s hard to see, too, how any difference between these two arrangements might work to the detriment of the Tribe. Just as we have never insisted on any particular form of words when it comes to disestablishing a reservation, we have never done so when it comes to establishing one. See *Minnesota v. Hitchcock*, 185 U. S. 373, 390 (1902) (“[I]n order to create a reservation it is not necessary that there should be a formal cession or a formal act setting apart a particular tract. It is enough that from what has been there results a certain defined tract appropriated to certain purposes”). As long as 120 years ago, the federal court for the Indian Territory recognized all this and rightly rejected the

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notion that fee title is somehow inherently incompatible with reservation status. *Maxey v. Wright*, 54 S. W. 807, 810 (Indian Terr. 1900).

By now, Oklahoma’s next move will seem familiar. Seeking to sow doubt around express treaty promises, it cites some stray language from a statute that does not control here, a piece of congressional testimony there, and the scattered opinions of agency officials everywhere in between. See, e.g., Act of July 31, 1882, ch. 360, 22 Stat. 179 (referring to Creek land as “Indian country” as opposed to an “Indian reservation”); S. Doc. No. 143, 59th Cong., 1st. Sess., 33 (1906) (Chief of Choctaw Nation—which had an arrangement similar to the Creek’s—testified that both Tribes “object to being classified with the reservation Indians”); Dept. of Interior, Census Office, Report on Indians Taxed and Indians Not Taxed in the U. S. 284 (1894) (Creeks and neighboring Tribes were “not on the ordinary Indian reservation, but on lands patented to them by the United States”). Oklahoma stresses that this Court even once called the Creek lands a “dependent Indian community,” though it used that phrase in passing and only to show that the Tribe’s “property and affairs were subject to the control and management of that government”—a point that would also be true if the lands were a reservation. *Creek Nation*, 295 U. S., at 109. Unsurprisingly given the Creek Nation’s nearly 200-year occupancy of these lands, both sides have turned up a few clues suggesting the label “reservation” either did or did not apply. One thing everyone can agree on is this history is long and messy.

But the most authoritative evidence of the Creek’s relationship to the land lies not in these scattered references; it lies in the treaties and statutes that promised the land to the Tribe in the first place. And, if not for the Tribe’s fee title to its land, no one would question that these treaties and statutes created a reservation. So the State’s argument inescapably boils down to the untenable suggestion that,

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when the federal government agreed to offer more protection for tribal lands, it really provided less. All this time, fee title was nothing more than another trap for the wary.

## V

That leaves Oklahoma to attempt yet another argument in the alternative. We alluded to it earlier in Part III. Now, the State accepts for argument's sake that the Creek land is a reservation and thus "Indian country" for purposes of the Major Crimes Act. It accepts, too, that this would normally mean serious crimes by Indians on the Creek Reservation would have to be tried in federal court. But, the State tells us, none of that matters; everything the parties have briefed and argued so far is beside the point. It's all irrelevant because it turns out the MCA just doesn't apply to the eastern half of Oklahoma, and it never has. That federal law may apply to other States, even to the western half of Oklahoma itself. But eastern Oklahoma is and has always been exempt. So whether or not the Creek have a reservation, the State's historic practices have always been correct and it remains free to try individuals like Mr. McGirt in its own courts.

Notably, the dissent again declines to join Oklahoma in its latest twist. And, it turns out, for good reason. In support of its argument, Oklahoma points to statutory artifacts from its territorial history. The State of Oklahoma was formed from two territories: the Oklahoma Territory in the west and Indian Territory in the east. Originally, it seems criminal prosecutions in the Indian Territory were split between tribal and federal courts. See Act of May 2, 1890, §30, 26 Stat. 94. But, in 1897, Congress abolished that scheme, granting the U. S. Courts of the Indian Territory "exclusive jurisdiction" to try "all criminal causes for the punishment of any offense." Act of June 7, 1897, 30 Stat. 83. These federal territorial courts applied federal law and



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state law borrowed from Arkansas “to all persons . . . irrespective of race.” *Ibid.* A year later, Congress abolished tribal courts and transferred all pending criminal cases to U. S. courts of the Indian Territory. Curtis Act of 1898, §28, 30 Stat. 504–505. And, Oklahoma says, sending Indians to federal court and all others to state court would be inconsistent with this established and enlightened policy of applying the same law in the same courts to everyone.

Here again, however, arguments along these and similar lines have been “frequently raised” but rarely “accepted.” *United States v. Sands*, 968 F. 2d 1058, 1061 (CA10 1992) (Kelly, J.). “The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation’s history.” *Rice v. Olson*, 324 U. S. 786, 789 (1945). Chief Justice Marshall, for example, held that Indian Tribes were “distinct political communities, having territorial boundaries, within which their authority is exclusive . . . which is not only acknowledged, but guaranteed by the United States,” a power dependent on and subject to no state authority. *Worcester v. Georgia*, 6 Pet. 515, 557 (1832); see also *McClanahan v. Arizona Tax Comm’n*, 411 U. S. 164, 168–169 (1973). And in many treaties, like those now before us, the federal government promised Indian Tribes the right to continue to govern themselves. For all these reasons, this Court has long “require[d] a clear expression of the intention of Congress” before the state or federal government may try Indians for conduct on their lands. *Ex parte Crow Dog*, 109 U. S. 556, 572 (1883).

Oklahoma cannot come close to satisfying this standard. In fact, the only law that speaks expressly here speaks *against* the State. When Oklahoma won statehood in 1907, the MCA applied immediately according to its plain terms. That statute, as phrased at the time, provided exclusive federal jurisdiction over qualifying crimes by Indians in “*any Indian reservation*” located within “the boundaries of *any*

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*State.*” Act of Mar. 3, 1885, ch. 341, §9, 23 Stat. 385 (emphasis added); see also 18 U. S. C. §1151 (defining “Indian country” even more broadly). By contrast, every one of the statutes the State directs us to merely discusses the assignment of cases among courts in the *Indian Territory*. They say nothing about the division of responsibilities between federal and state authorities after Oklahoma entered the Union. And however enlightened the State may think it was for territorial law to apply to all persons irrespective of race, some Tribe members may see things differently, given that the same policy entailed the forcible closure of tribal courts in defiance of treaty terms.

Left to hunt for some statute that might have rendered the MCA inapplicable in Oklahoma after statehood, the best the State can find is the Oklahoma Enabling Act. Congress adopted that law in preparation for Oklahoma’s admission in 1907. Among its many provisions sorting out the details associated with Oklahoma’s transition to statehood, the Enabling Act transferred all nonfederal cases pending in territorial courts to Oklahoma’s new state courts. Act of June 16, 1906, §20, 34 Stat. 277; see also Act of Mar. 4, 1907, §3, 34 Stat. 1287 (clarifying treatment of cases to which United States was a party). The State says this transfer made its courts the inheritors of the federal territorial courts’ sweeping authority to try Indians for crimes committed on reservations.

But, at best, this tells only half the story. The Enabling Act not only sent all nonfederal cases pending in territorial courts to state court. It *also* transferred pending cases that arose “under the Constitution, laws, or treaties of the United States” to federal district courts. §16, 34 Stat. 277. Pending criminal cases were thus transferred to federal court if the prosecution would have belonged there had the Territory been a State at the time of the crime. §1, 34 Stat. 1287 (amending the Enabling Act). Nor did the statute make any distinction between cases arising in the former

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eastern (Indian) and western (Oklahoma) territories. So, simply put, the Enabling Act sent state-law cases to state court and federal-law cases to federal court. And serious crimes by Indians in Indian country were matters that arose under the federal MCA and thus properly belonged in federal court from day one, wherever they arose within the new State.

Maybe that's right, Oklahoma acknowledges, but that's not what happened. Instead, for many years the State continued to try Indians for crimes committed anywhere within its borders. But what can that tell us? The State identifies not a single ambiguous statutory term in the MCA that its actions might illuminate. And, as we have seen, its own courts have acknowledged that the State's historic practices deviated in meaningful ways from the MCA's terms. See *supra*, at 22–23. So, once more, it seems Oklahoma asks us to defer to its usual practices *instead of* federal law, something we will not and may never do.

That takes Oklahoma down to its last straw when it comes to the MCA. If Oklahoma lacks the jurisdiction to try Native Americans it has historically claimed, that means at the time of its entry into the Union *no one* had the power to try minor Indian-on-Indian crimes committed in Indian country. This much follows, Oklahoma reminds us, because the MCA provides federal jurisdiction only for major crimes, and no tribal forum existed to try lesser cases after Congress abolished the tribal courts in 1898. Curtis Act, §28, 30 Stat. 504–505. Whatever one thinks about the plausibility of other discontinuities between federal law and state practice, the State says, it is unthinkable that Congress would have allowed such a significant “jurisdictional gap” to open at the moment Oklahoma achieved statehood.

But what the State considers unthinkable turns out to be easily imagined. Jurisdictional gaps are hardly foreign to this area of the law. See, e.g., *Duro v. Reina*, 495 U. S. 676,

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704–706 (1990) (Brennan, J., dissenting). Many tribal courts across the country were absent or ineffective during the early part of the last century, yielding just the sort of gaps Oklahoma would have us believe impossible. Indeed, this might be why so many States joined Oklahoma in prosecuting Indians without proper jurisdiction. The judicial mind abhors a vacuum, and the temptation for state prosecutors to step into the void was surely strong. See *supra*, at 23–24.

With time, too, Congress has filled many of the gaps Oklahoma worries about. One way Congress has done so is by reauthorizing tribal courts to hear minor crimes in Indian country. Congress chose exactly this course for the Creeks and others in 1936. Act of June 26, 1936, §3, 49 Stat. 1967; see also *Hodel*, 851 F. 2d, at 1442–1446. Another option Congress has employed is to allow affected Indian tribes to consent to state criminal jurisdiction. 25 U. S. C. §§1321(a), 1326. Finally, Congress has sometimes expressly expanded state criminal jurisdiction in targeted bills addressing specific States. See, e.g., 18 U. S. C. §3243 (creating jurisdiction for Kansas); Act of May 31, 1946, ch. 279, 60 Stat. 229 (same for a reservation in North Dakota); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (same for certain reservations in Iowa); 18 U. S. C. §1162 (creating jurisdiction for six additional States). But Oklahoma doesn’t claim to have complied with the requirements to assume jurisdiction voluntarily over Creek lands. Nor has Congress ever passed a law conferring jurisdiction on Oklahoma. As a result, the MCA applies to Oklahoma according to its usual terms: Only the federal government, not the State, may prosecute Indians for major crimes committed in Indian country.

## VI

In the end, Oklahoma abandons any pretense of law and speaks openly about the potentially “transform[ative]” effects of a loss today. Brief for Respondent 43. Here, at

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least, the State is finally rejoined by the dissent. If we dared to recognize that the Creek Reservation was never disestablished, Oklahoma and dissent warn, our holding might be used by other tribes to vindicate similar treaty promises. Ultimately, Oklahoma fears that perhaps as much as half its land and roughly 1.8 million of its residents could wind up within Indian country.

It's hard to know what to make of this self-defeating argument. Each tribe's treaties must be considered on their own terms, and the only question before us concerns the Creek. Of course, the Creek Reservation alone is hardly insignificant, taking in most of Tulsa and certain neighboring communities in Northeastern Oklahoma. But neither is it unheard of for significant non-Indian populations to live successfully in or near reservations today. See, *e.g.*, Brief for National Congress of American Indians Fund as *Amicus Curiae* 26–28 (describing success of Tacoma, Washington, and Mount Pleasant, Michigan); see also *Parker*, 577 U. S., at \_\_\_\_–\_\_\_\_ (slip op., at 10–12) (holding Pender, Nebraska, to be within Indian country despite tribe's absence from the disputed territory for more than 120 years). Oklahoma replies that its situation is different because the affected population here is large and many of its residents will be surprised to find out they have been living in Indian country this whole time. But we imagine some members of the 1832 Creek Tribe would be just as surprised to find them there.

What are the consequences the State and dissent worry might follow from an adverse ruling anyway? Primarily, they argue that recognizing the continued existence of the Creek Reservation could unsettle an untold number of convictions and frustrate the State's ability to prosecute crimes in the future. But the MCA applies only to certain crimes committed in Indian country by Indian defendants. A neighboring statute provides that federal law applies to a broader range of crimes by or against Indians in Indian country. See 18 U. S. C. §1152. States are otherwise free

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to apply their criminal laws in cases of non-Indian victims and defendants, including within Indian country. See *McBratney*, 104 U. S., at 624. And Oklahoma tells us that somewhere between 10% and 15% of its citizens identify as Native American. Given all this, even Oklahoma admits that the vast majority of its prosecutions will be unaffected whatever we decide today.

Still, Oklahoma and the dissent fear, “[t]housands” of Native Americans like Mr. McGirt “wait in the wings” to challenge the jurisdictional basis of their state-court convictions. Brief for Respondent 3. But this number is admittedly speculative, because many defendants may choose to finish their state sentences rather than risk reprosecution in federal court where sentences can be graver. Other defendants who do try to challenge their state convictions may face significant procedural obstacles, thanks to well-known state and federal limitations on post-conviction review in criminal proceedings.<sup>15</sup>

In any event, the magnitude of a legal wrong is no reason to perpetuate it. When Congress adopted the MCA, it broke many treaty promises that had once allowed tribes like the Creek to try their own members. But, in return, Congress allowed only the federal government, not the States, to try

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<sup>15</sup> For example, Oklahoma appears to apply a general rule that “issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review.” *Logan v. State*, 2013 OK CR 2, ¶ 1, 293 P. 3d 969, 973. Indeed, JUSTICE THOMAS contends that this state-law limitation on collateral review prevents us from considering even the case now before us. *Post*, at 2 (dissenting opinion). But while that state-law rule may often bar our way, it doesn’t in this case. After noting a potential state-law obstacle, the Oklahoma Court of Criminal Appeals (OCCA) proceeded to address the merits of Mr. McGirt’s federal MCA claim anyway. Because the OCCA’s opinion “fairly appears to rest primarily on federal law or to be interwoven with federal law” and lacks any “plain statement” that it was relying on a state-law ground, we have jurisdiction to consider the federal-law question presented to us. See *Michigan v. Long*, 463 U. S. 1032, 1040–1041, 1044 (1983).

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tribal members for major crimes. All our decision today does is vindicate that replacement promise. And if the threat of unsettling convictions cannot save a precedent of this Court, see *Ramos v. Louisiana*, 590 U. S. \_\_\_, \_\_\_–\_\_\_ (2020) (plurality opinion) (slip op., at 23–26), it certainly cannot force us to ignore a statutory promise when no precedent stands before us at all.

What’s more, a decision for *either* party today risks upsetting some convictions. Accepting the State’s argument that the MCA never applied in Oklahoma would preserve the state-court convictions of people like Mr. McGirt, but simultaneously call into question every *federal* conviction obtained for crimes committed on trust lands and restricted Indian allotments since Oklahoma recognized its jurisdictional error more than 30 years ago. See *supra*, at 22. It’s a consequence of their own arguments that Oklahoma and the dissent choose to ignore, but one which cannot help but illustrate the difficulty of trying to guess how a ruling one way or the other might affect past cases rather than simply proceeding to apply the law as written.

Looking to the future, Oklahoma warns of the burdens federal and tribal courts will experience with a wider jurisdiction and increased caseload. But, again, for every jurisdictional reaction there seems to be an opposite reaction: recognizing that cases like Mr. McGirt’s belong in federal court simultaneously takes them out of state court. So while the federal prosecutors might be initially understaffed and Oklahoma prosecutors initially overstaffed, it doesn’t take a lot of imagination to see how things could work out in the end.

Finally, the State worries that our decision will have significant consequences for civil and regulatory law. The only question before us, however, concerns the statutory definition of “Indian country” as it applies in federal criminal law under the MCA, and often nothing requires other civil stat-

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utes or regulations to rely on definitions found in the criminal law. Of course, many federal civil laws and regulations do currently borrow from §1151 when defining the scope of Indian country. But it is far from obvious why this collateral drafting choice should be allowed to skew our interpretation of the MCA, or deny its promised benefits of a federal criminal forum to tribal members.

It isn't even clear what the real upshot of this borrowing into civil law may be. Oklahoma reports that recognizing the existence of the Creek Reservation for purposes of the MCA might potentially trigger a variety of federal civil statutes and rules, including ones making the region eligible for assistance with homeland security, 6 U. S. C. §§601, 606, historical preservation, 54 U. S. C. §302704, schools, 20 U. S. C. §1443, highways, 23 U. S. C. §120, roads, §202, primary care clinics, 25 U. S. C. §1616e–1, housing assistance, §4131, nutritional programs, 7 U. S. C. §§2012, 2013, disability programs, 20 U. S. C. §1411, and more. But what are we to make of this? Some may find developments like these unwelcome, but from what we are told others may celebrate them.

The dissent isn't so sanguine—it assures us, without further elaboration, that the consequences will be “drastic precisely because they depart from . . . more than a century [of] settled understanding.” *Post*, at 37. The prediction is a familiar one. Thirty years ago the Solicitor General warned that “[l]aw enforcement would be rendered very difficult” and there would be “grave uncertainty regarding the application” of state law if courts departed from decades of “long-held understanding” and recognized that the federal MCA applies to restricted allotments in Oklahoma. Brief for United States as *Amicus Curiae* in *Oklahoma v. Brooks*, O.T. 1988, No. 88–1147, pp. 2, 9, 18, 19. Yet, during the intervening decades none of these predictions panned out, and that fact stands as a note of caution against too readily crediting identical warnings today.



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More importantly, dire warnings are just that, and not a license for us to disregard the law. By suggesting that our interpretation of Acts of Congress adopted a century ago should be inflected based on the costs of enforcing them today, the dissent tips its hand. Yet again, the point of looking at subsequent developments seems not to be determining the meaning of the laws Congress wrote in 1901 or 1906, but emphasizing the costs of taking them at their word.

Still, we do not disregard the dissent’s concern for reliance interests. It only seems to us that the concern is misplaced. Many other legal doctrines—procedural bars, res judicata, statutes of repose, and laches, to name a few—are designed to protect those who have reasonably labored under a mistaken understanding of the law. And it is precisely because those doctrines exist that we are “fre[e] to say what we know to be true . . . today, while leaving questions about . . . reliance interest[s] for later proceedings crafted to account for them.” *Ramos*, 590 U. S., at \_\_\_\_ (plurality opinion) (slip op., at 24).

In reaching our conclusion about what the law demands of us today, we do not pretend to foretell the future and we proceed well aware of the potential for cost and conflict around jurisdictional boundaries, especially ones that have gone unappreciated for so long. But it is unclear why pessimism should rule the day. With the passage of time, Oklahoma and its Tribes have proven they can work successfully together as partners. Already, the State has negotiated hundreds of intergovernmental agreements with tribes, including many with the Creek. See Okla. Stat., Tit. 74, §1221 (2019 Cum. Supp.); Oklahoma Secretary of State, Tribal Compacts and Agreements, [www.sos.ok.gov/tribal.aspx](http://www.sos.ok.gov/tribal.aspx). These agreements relate to taxation, law enforcement, vehicle registration, hunting and fishing, and countless other fine regulatory questions. See Brief for Tom Cole et al. as *Amici Curiae* 13–19. No one before us claims that the spirit of good faith, “comity and

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cooperative sovereignty” behind these agreements, *id.*, at 20, will be imperiled by an adverse decision for the State today any more than it might be by a favorable one.<sup>16</sup> And, of course, should agreement prove elusive, Congress remains free to supplement its statutory directions about the lands in question at any time. It has no shortage of tools at its disposal.

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The federal government promised the Creek a reservation in perpetuity. Over time, Congress has diminished that reservation. It has sometimes restricted and other times expanded the Tribe’s authority. But Congress has never withdrawn the promised reservation. As a result, many of the arguments before us today follow a sadly familiar pattern. Yes, promises were made, but the price of keeping them has become too great, so now we should just cast a blind eye. We reject that thinking. If Congress wishes to withdraw its promises, it must say so. Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right.

The judgment of the Court of Criminal Appeals of Oklahoma is

*Reversed.*

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<sup>16</sup> This sense of cooperation and a shared future is on display in this very case. The Creek Nation is supported by an array of leaders of other Tribes and the State of Oklahoma, many of whom had a role in negotiating exactly these agreements. See Brief for Tom Cole et al. as *Amici Curiae* 1 (“Amici are a former Governor, State Attorney General, cabinet members, and legislators of the State of Oklahoma, and two federally recognized Indian tribes, the Chickasaw Nation and Choctaw Nation of Oklahoma”) (brief authored by Robert H. Henry, also a former State Attorney General and Chief Judge of the Tenth Circuit).

ROBERTS, C. J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 18–9526

JIMCY MCGIRT, PETITIONER *v.* OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
APPEALS OF OKLAHOMA

[July 9, 2020]

CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO and JUSTICE KAVANAUGH join, and with whom JUSTICE THOMAS joins except as to footnote 9, dissenting.

In 1997, the State of Oklahoma convicted petitioner Jimcy McGirt of molesting, raping, and forcibly sodomizing a four-year-old girl, his wife’s granddaughter. McGirt was sentenced to 1,000 years plus life in prison. Today, the Court holds that Oklahoma lacked jurisdiction to prosecute McGirt—on the improbable ground that, unbeknownst to anyone for the past century, a huge swathe of Oklahoma is actually a Creek Indian reservation, on which the State may not prosecute serious crimes committed by Indians like McGirt. Not only does the Court discover a Creek reservation that spans three million acres and includes most of the city of Tulsa, but the Court’s reasoning portends that there are four more such reservations in Oklahoma. The rediscovered reservations encompass the entire eastern half of the State—19 million acres that are home to 1.8 million people, only 10%–15% of whom are Indians.

Across this vast area, the State’s ability to prosecute serious crimes will be hobbled and decades of past convictions could well be thrown out. On top of that, the Court has profoundly destabilized the governance of eastern Oklahoma. The decision today creates significant uncertainty for the State’s continuing authority over any area that touches Indian affairs, ranging from zoning and taxation to family and

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environmental law.

None of this is warranted. What has gone unquestioned for a century remains true today: A huge portion of Oklahoma is not a Creek Indian reservation. Congress disestablished any reservation in a series of statutes leading up to Oklahoma statehood at the turn of the 19th century. The Court reaches the opposite conclusion only by disregarding the “well settled” approach required by our precedents. *Nebraska v. Parker*, 577 U. S. 481, \_\_\_ (2016) (slip op., at 5).

Under those precedents, we determine whether Congress intended to disestablish a reservation by examining the relevant Acts of Congress and “all the [surrounding] circumstances,” including the “contemporaneous and subsequent understanding of the status of the reservation.” *Id.*, at \_\_\_ (slip op., at 6) (internal quotation marks omitted). Yet the Court declines to consider such understandings here, preferring to examine only individual statutes in isolation.

Applying the broader inquiry our precedents require, a reservation did not exist when McGirt committed his crimes, so Oklahoma had jurisdiction to prosecute him. I respectfully dissent.

## I

The Creek Nation once occupied what is now Alabama and Georgia. In 1832, the Creek were compelled to cede these lands to the United States in exchange for land in present day Oklahoma. The expanse set aside for the Creek and the other Indian nations that composed the “Five Civilized Tribes”—the Cherokees, Chickasaws, Choctaws, and Seminoles—became known as Indian Territory. See F. Cohen, *Handbook of Federal Indian Law* §4.07(1)(a), pp. 289–290 (N. Newton ed. 2012) (Cohen). Each of the Five Tribes formed a tripartite system of government. See *Marlin v. Lewallen*, 276 U. S. 58, 60 (1928). They “enact[ed] and execut[ed] their own laws,” “punish[ed] their own criminals,” and “rais[ed] and expend[ed] their own revenues.” *Atlantic*

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& *Pacific R. Co. v. Mingus*, 165 U. S. 413, 436 (1897).

The Five Tribes also enjoyed unique property rights. While many tribes held only a “right of occupancy” on lands owned by the United States, *United States v. Creek Nation*, 295 U. S. 103, 109 (1935), each of the Five Tribes possessed title to its lands in communal fee simple, meaning the lands were “considered the property of the whole.” *E.g.*, Treaty with the Creeks, Arts. III and IV, Feb. 14, 1833, 7 Stat. 419; see *Marlin*, 276 U. S., at 60. Congress promised the Tribes that their lands would never be “included within, or annexed to, any Territory or State,” see, *e.g.*, Treaty with Creeks and Seminoles, Art. IV, Aug. 7, 1856, 11 Stat. 700 (1856 Treaty), and that their new homes would be “forever secure,” Indian Removal Act, §3, 4 Stat. 412; see also Treaty with the Creeks, Arts. I and XIV, Mar. 24, 1832, 7 Stat. 368.

Forever, it turns out, did not last very long, because the Civil War disrupted both relationships and borders. The Five Tribes, whose members collectively held at least 8,000 slaves, signed treaties of alliance with the Confederacy and contributed forces to fight alongside Rebel troops. See Gibson, *Native Americans and the Civil War*, 9 *Am. Indian Q.* 4, 385, 388–389, 393 (1985); Doran, *Negro Slaves of the Five Civilized Tribes*, 68 *Annals Assn. Am. Geographers* 335, 346–347, and Table 3 (1978); Cohen §4.07(1)(a), at 289. After the war, the United States and the Tribes formed new treaties, which required each Tribe to free its slaves and allow them to become tribal citizens. *E.g.*, Treaty with the Creek Indians, Art. II, June 14, 1866, 14 Stat. 786 (1866 Treaty); see Cohen §4.07(1)(a), at 289, and n. 9. The treaties also stated that the Tribes had “ignored their allegiance to the United States” and “unsettled the [existing] treaty relations,” thereby rendering themselves “liable to forfeit” all “benefits and advantages enjoyed by them”—including their lands. *E.g.*, 1866 Treaty, Preamble, 14 Stat. 785. Due to “said liabilities,” the treaties departed from prior promises and required each Tribe to give up the “west half” of its

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“entire domain.” *E.g.*, Preamble and Art. III, *id.*, at 785–786. These western lands became the Oklahoma Territory. As before, the new treaties promised that the reduced Indian Territory would be “forever set apart as a home” for the Tribes. *E.g.*, Art. III, *id.*, at 786.<sup>1</sup>

Again, however, it was not to last. In the wake of the war, a renewed “determination to thrust the nation westward” gripped the country. Cohen §1.04, at 71. Spurred by new railroads and protected by the repurposed Union Army, settlers rapidly transformed vast stretches of territorial wilderness into farmland and ranches. See *id.*, at 71–74. The Indian Territory was no exception. By 1900, over 300,000 settlers had poured in, outnumbering members of the Five Tribes by over 3 to 1. See H. R. Rep. No. 1762, 56th Cong., 1st Sess., 1 (1900). There to stay, the settlers founded “[f]lourishing towns” along the railway lines that crossed the territory. S. Rep. No. 377, 53d Cong., 2d Sess., 6 (1894).

Coexistence proved complicated. The new towns had no municipal governments or the things that come with them—laws, taxes, police, and the like. See H. R. Doc. No. 5, 54th Cong., 1st Sess., 89 (1895). No one had meaningful access to private property ownership, as the unique communal titles of the Five Tribes precluded ownership by Indians and non-Indians alike. Despite the millions of dollars that had been invested in the towns and farmlands, residents had no durable claims to their improvements. *Ibid.* Members of the Tribes were little better off, as the

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<sup>1</sup>I assume that the Creek Nation’s territory constituted a “reservation” at this time. See *ante*, at 5–6. The State contends that no reservation existed in the first place because the territory instead constituted a “dependent Indian communit[y].” Brief for Respondent 8 (quoting 18 U. S. C. §1151(b)). The United States disagrees and states that defining the territory as a dependent Indian community could disrupt the application of various federal statutes. Tr. of Oral Arg. 79–80. I do not address this debate because, regardless, I conclude that any reservation was disestablished.

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Tribes failed to hold the communal lands for the “equal benefit” of all members. *Woodward v. De Graffenried*, 238 U. S. 284, 297 (1915). Instead, a few “enterprising citizens” of the Tribes “appropriate[d] to their exclusive use almost the entire property of the Territory that could be rendered profitable.” *Id.*, at 297, 299, n. 1 (internal quotation marks omitted). As a result, “the poorer class of Indians [were] unable to secure enough lands for houses and farms,” and “the great body of the tribe derive[d] no more benefit from their title than the neighbors in Kansas, Arkansas, or Missouri.” *Id.*, at 299–301, n. 1 (emphasis deleted; internal quotation marks omitted).

Attuned to these new realities, Congress decided that it could not maintain an Indian Territory predicated on “exclusion of the Indians from the whites.” S. Rep. No. 377, at 6. Congress therefore set about transforming the Indian Territory into a State.

Congress began by establishing a uniform body of law applicable to all occupants of the territory, regardless of race. To apply these laws, Congress established the U. S. Courts for the Indian Territory. Next Congress systematically dismantled the tribal governments. It abolished tribal courts, hollowed out tribal lawmaking power, and stripped tribal taxing authority. Congress also eliminated the foundation of tribal sovereignty, extinguishing the Creek Nation’s title to the lands. Finally, Congress made the tribe members citizens of the United States and incorporated them in the drafting and ratification of the constitution for their new State, Oklahoma.

In taking these transformative steps, Congress made no secret of its intentions. It created a commission tasked with extinguishing the Five Tribes’ territory and, in one report after another, explained that it was creating a homogenous population led by a common government. That contemporaneous understanding was shared by the tribal leadership

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and the State of Oklahoma. The tribal leadership acknowledged that its only remaining power was to parcel out the last of its land, and the State assumed jurisdiction over criminal cases that, if a reservation had continued to exist, would have belonged in federal court.

A century of practice confirms that the Five Tribes' prior domains were extinguished. The State has maintained unquestioned jurisdiction for more than 100 years. Tribe members make up less than 10%–15% of the population of their former domain, and until a few years ago the Creek Nation itself acknowledged that it no longer possessed the reservation the Court discovers today. This on-the-ground reality is enshrined throughout the U. S. Code, which repeatedly terms the Five Tribes' prior holdings the “former” Indian reservations in Oklahoma. As the Tribes, the State, and Congress have recognized from the outset, those “reservations were destroyed” when “Oklahoma entered the Union.” S. Rep. No. 101–216, pt. 2, p. 47 (1989).

## II

Much of this important context is missing from the Court's opinion, for the Court restricts itself to viewing each of the statutes enacted by Congress in a vacuum. That approach is wholly inconsistent with our precedents on reservation disestablishment, which require a highly contextual inquiry. Our “touchstone” is congressional “purpose” or “intent.” *South Dakota v. Yankton Sioux Tribe*, 522 U. S. 329, 343 (1998). To “decipher Congress' intention” in this specialized area, we are instructed to consider three categories of evidence: the relevant Acts passed by Congress; the contemporaneous understanding of those Acts and the historical context surrounding their passage; and the subsequent understanding of the status of the reservation and the pattern of settlement there. *Solem v. Bartlett*, 465 U. S. 463, 470–472 (1984). The Court resists calling these “steps,” be-



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cause “the only ‘step’ proper for a court of law” is interpreting the laws enacted by Congress. *Ante*, at 17–18. Any label is fine with us. What matters is that these are categories of evidence that our precedents “direct[] us” to examine *in determining* whether the laws enacted by Congress disestablished a reservation. *Hagen v. Utah*, 510 U. S. 399, 410–411 (1994). Because those precedents are not followed by the Court today, it is necessary to describe several at length.<sup>2</sup>

In *Solem v. Bartlett*, 465 U. S. 463 (1984), a unanimous Court summarized the appropriate methodology. “Congress [must] clearly evince an intent to change boundaries before diminishment will be found.” *Id.*, at 470 (internal quotation marks and alterations omitted). This inquiry first considers the “statutory language used to open the Indian lands,” which is the “most probative evidence of congressional intent.” *Ibid.* “Explicit reference to cession or other language evidencing the present and total surrender of all tribal interests strongly suggests that Congress meant to divest from the reservation all unallotted opened lands.” *Ibid.* But “explicit language of cession and unconditional compensation are not prerequisites” for a finding of disestablishment. *Id.*, at 471.

Second, we consider “events surrounding the passage of

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<sup>2</sup>Our precedents have generally considered whether Congress disestablished or diminished a reservation by enacting “surplus land Acts” that opened land to non-Indian settlement. Here Congress did much more than that, as I will explain. Even so, there is broad agreement among the parties, the United States, the Creek Nation, and even the Court that our precedents on surplus land Acts provide the governing framework for this case, so I proceed on the same course. See Brief for Petitioner 1; Brief for Respondent 29, 35, 40; Brief for United States as *Amicus Curiae* 4–5; Brief for Muscogee (Creek) Nation as *Amicus Curiae* 1–2; *ante*, at 7–8, 18–19.

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[an] Act—particularly the manner in which the transaction was negotiated with the tribes involved and the tenor of legislative Reports presented to Congress.” *Ibid.* When such materials “unequivocally reveal a widely held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation,” we will “infer that Congress shared the understanding that its action would diminish the reservation,” even in the face of “statutory language that would otherwise suggest reservation boundaries remained unchanged.” *Ibid.*

Third, to a “lesser extent,” we examine “events that occurred after the passage of [an] Act to decipher Congress’ intentions.” *Ibid.* “Congress’ own treatment of the affected areas, particularly in the years immediately following the opening, has some evidentiary value, as does the manner in which the Bureau of Indian Affairs and local judicial authorities dealt with [the areas].” *Ibid.* In addition, “we have recognized that who actually moved onto opened reservation lands is also relevant.” *Ibid.* “Where non-Indian settlers flooded into the opened portion of a reservation and the area has long since lost its Indian character, we have acknowledged that *de facto*, if not *de jure*, diminishment may have occurred.” *Ibid.* This “subsequent demographic history” provides an “additional clue as to what Congress expected would happen.” *Id.*, at 471–472.

Fifteen years later, another unanimous Court described the same methodology more pithily in *South Dakota v. Yankton Sioux Tribe*, 522 U. S. 329 (1998). First, the Court reiterated that the “most probative evidence of diminishment is, of course, the statutory language.” *Id.*, at 344 (internal quotation marks omitted). The Court continued that it would also consider, second, “the historical context surrounding the passage of the . . . Acts,” and third, “the subsequent treatment of the area in question and the pattern of settlement there.” *Ibid.* (quoting *Hagen*, 510 U. S., at 411).

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The Court today treats these precedents as aging relics in need of “clarification[.]” *Ante*, at 19. But these precedents have been clear enough for some time. Just a few Terms ago, the same inquiry was described as “well settled” by the unanimous Court in *Nebraska v. Parker*, 577 U. S. 481, \_\_\_\_ (2016) (slip op., at 5). First, the Court explained, “we start with the statutory text.” *Ibid.* “Under our precedents,” the Court continued, “we also ‘examine all the circumstances surrounding the opening of a reservation.’” *Id.*, at \_\_\_\_ (slip op., at 6) (quoting *Hagen*, 510 U. S., at 412). Thus, second and third, we “look to any unequivocal evidence of the contemporaneous and subsequent understanding of the status of the reservation by members and non-members, as well as the United States and the State.” 577 U. S., at \_\_\_\_ (slip op., at 6) (internal quotation marks omitted). These inquiries include, respectively, the “history surrounding the passage of the [relevant] Act” as well as the subsequent “demographic history” and “treatment” of the lands at issue. *Id.*, at \_\_\_\_, \_\_\_\_ (slip op., at 8, 10).

Today the Court does not even discuss the governing approach reiterated throughout these precedents. The Court briefly recites the general rule that disestablishment requires clear congressional “intent,” *ante*, at 8, but the Court then declines to examine the categories of evidence that our precedents demand we consider. Instead, the Court argues at length that allotment alone is not enough to disestablish a reservation. *Ante*, at 8–12. Then the Court argues that the “many” “serious blows” dealt by Congress to tribal governance, and the creation of the new State of Oklahoma, are each insufficient for disestablishment. *Ante*, at 13–16. Then the Court emphasizes that “historical practices or current demographics” do not “by themselves” “suffice” to disestablish a reservation. *Ante*, at 17–18.

This is a school of red herrings. No one here contends that any individual congressional action or piece of evi-

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dence, standing alone, disestablished the Creek reservation. Rather, Oklahoma contends that all of the relevant Acts of Congress together, viewed in light of contemporaneous and subsequent contextual evidence, demonstrate Congress's intent to disestablish the reservation. "[O]ur traditional approach . . . *requires* us" to determine Congress's intent by "examin[ing] *all* the circumstances surrounding the opening of a reservation." *Hagen*, 510 U. S., at 412 (emphasis added). Yet the Court refuses to confront the cumulative import of all of Congress's actions here.

The Court instead announces a new approach sharply restricting consideration of contemporaneous and subsequent evidence of congressional intent. The Court states that such "extratextual sources" may be considered in "only" one narrow circumstance: to help "'clear up'" ambiguity in a particular "statutory term or phrase." *Ante*, at 17–18, 20 (quoting *Milner v. Department of Navy*, 562 U. S. 562, 574 (2011), and citing *New Prime Inc. v. Oliveira*, 586 U. S. \_\_\_, \_\_\_ (2019) (slip op., at 6)).

But, if that is the right approach, what have we been doing all these years? Every single one of our disestablishment cases has considered extratextual sources, and in doing so, none has required the identification of ambiguity in a particular term. That is because, while it is well established that Congress's "intent" must be "clear," *ante*, at 20 (quoting *Yankton Sioux Tribe*, 522 U. S., at 343), in this area we have expressly held that the appropriate inquiry does not focus on the statutory text alone.

Today the Court suggests that only the text can satisfy the longstanding requirement that Congress "explicitly indicate[]" its intent. *Ante*, at 20 (quoting *Solem*, 465 U. S., at 470). The Court reiterates that a reservation persists unless Congress "said otherwise," *ante*, at 1; if Congress wishes to disestablish a reservation, "it must say so," with the right "language." *Ante*, at 8, 18; see *ante*, at 42 (same).

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Our precedents disagree. They explain that disestablishment can occur “[e]ven in the absence of a clear expression of congressional purpose in the text of [the] Act.” *Yankton Sioux Tribe*, 522 U. S., at 351. The “notion” that “express language in an Act is the *only* method by which congressional action may result in disestablishment” is “quite inconsistent” with our precedents. *Rosebud Sioux Tribe v. Kneip*, 430 U. S. 584, 586, 588, n. 4 (1977); see *Solem*, 465 U. S., at 471 (intent may be discerned from a “widely held, contemporaneous understanding,” “notwithstanding the presence of statutory language that would otherwise suggest reservation boundaries remained unchanged”); see also *DeCoteau v. District County Court for Tenth Judicial Dist.*, 420 U. S. 425, 444 (1975); *Mattz v. Arnett*, 412 U. S. 481, 505 (1973).

These are not “stiche[d] together quotes” but rather plain language reflecting a consistent theme running through our precedents. *Ante*, at 20, n. 9. They make clear that the Court errs in focusing on whether “a statute” alone “required” disestablishment, *ante*, at 20; under these precedents, we cannot determine what Congress “required” without first considering evidence in addition to the relevant statutes. Oddly, the Court claims these precedents actually support its new approach because they “emphasize that ‘[t]he focus of our inquiry is congressional intent.’” *Ante*, at 20–21, n. 9 (quoting *Rosebud Sioux Tribe*, 430 U. S., at 588, n. 4, and citing *Yankton Sioux Tribe*, 522 U. S., at 343). But in this context that intent is determined by examining a broad array of evidence—“all the circumstances.” *Parker*, 577 U. S., at \_\_\_\_ (slip op., at 6) (quoting *Hagen*, 510 U. S., at 412). Unless the Court is prepared to overrule these precedents, it should follow them.

The Court appears skeptical of these precedents, but does not address the compelling reasons they give for considering extratextual evidence. At the turn of the century, the possibility that a reservation might persist in the absence

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of “tribal ownership” of the underlying lands was “unfamiliar,” and the prevailing “assumption” was that “Indian reservations were a thing of the past.” *Solem*, 465 U. S., at 468. Congress believed “to a man” that “within a short time” the “Indian tribes would enter traditional American society and the reservation system would cease to exist.” *Ibid.* As a result, Congress—while intending disestablishment—did not always “detail” precise changes to reservation boundaries. *Ibid.* Recognizing this distinctive backdrop, our precedents determine Congress’s intent by considering a broader variety of evidence than we might for more run-of-the-mill questions of statutory interpretation. See *id.*, at 468–469; *Parker*, 577 U. S., at \_\_\_ (slip op., at 6); *Yankton Sioux Tribe*, 522 U. S., at 343. See also Cohen §2.02(1), at 113 (“The theory and practice of interpretation in federal Indian law differs from that of other fields of law.”).

The Court next claims that *Parker* “clarified” that evidence of the subsequent treatment of the disputed land by government officials “has limited interpretive value.” *Ante*, at 19 (quoting *Parker*, 577 U. S., at \_\_\_ (slip op., at 11)). But *Parker* held that the subsequent evidence *in that case* “ha[d] ‘limited interpretive value,’” as in the case that *Parker* relied on. 577 U. S., at \_\_\_–\_\_\_ (slip op., at 11–12) (quoting *Yankton Sioux Tribe*, 522 U. S., at 355). The adequacy of evidence in a particular case says nothing about whether our precedents require us to consider such evidence in others.<sup>3</sup>

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<sup>3</sup>The Court rejects this reading of *Parker* based on a quotation that ends with what sounds like a general principle that “[e]vidence of the subsequent treatment of the disputed land by Government officials likewise has ‘limited interpretive value.’” *Ante*, at 19, n. 8 (quoting *Parker*, 577 U. S., at \_\_\_ (slip op., at 11)). But that sentence was actually the topic sentence of a new paragraph that addressed the *particular* evidence of subsequent treatment of the *particular* land by the *particular* government officials in that case. *Id.*, at \_\_\_–\_\_\_ (slip op., at 11–12). It is clear

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The Court finally resorts to torching strawmen. No one relying on our precedents contends that “practical advantages” require “ignoring the written law.” *Ante*, at 27. No one claims a State has “authority to reduce federal reservations.” *Ante*, at 7. No one says the role of courts is to “sav[e] the political branches” from “embarrassment.” *Ibid*. No one argues that courts can “adjust[ ]” reservation borders. *Ibid*. Such notions have nothing to do with our precedents. What our precedents do provide is the settled approach for determining whether Congress disestablished a reservation, and the Court starkly departs from that approach here.

### III

Applied properly, our precedents demonstrate that Congress disestablished any reservation possessed by the Creek Nation through a relentless series of statutes leading up to Oklahoma statehood.

### A

The statutory texts are the “most probative evidence” of congressional intent. *Parker*, 577 U. S., at \_\_\_\_ (slip op., at 5) (quoting *Hagen*, 510 U. S., at 411). The Court appropriately examines the Original Creek Agreement of 1901 and a subsequent statute for language of disestablishment, such as “cession,” “abolish[ing]” the reservation, “restor[ing]” land to the “public domain,” or an “unconditional commitment” to “compensate” the Tribe. *Ante*, at 8–12 (internal quotation marks omitted). But that is only the beginning

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that *Parker* merely concluded that the evidence cited by the parties provided a “mixed record of subsequent treatment” that did not move the needle either way. *Ibid*. (internal quotation marks omitted). *Parker* did not silently overturn our precedents requiring us to consider—and accord “weight” to—subsequent evidence that plainly favors, or undermines, disestablishment. *Rosebud Sioux Tribe v. Kneip*, 430 U. S. 584, 604 (1977); see *supra*, at 6–9.

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of the analysis; there is no “magic words” requirement for disestablishment, and each individual statute may not be considered in isolation. See *supra*, at 10–11; *Hagen*, 510 U. S., at 411, 415–416 (when two statutes “buil[d]” on one another in this area, “[both] statutes—as well as those that came in between—must therefore be read together”); see also *Rosebud Sioux Tribe*, 430 U. S., at 592 (recognizing that a statute “cannot, and should not, be read as if it were the first time Congress had addressed itself to” disestablishment when prior statutes also indicate congressional intent). In this area, “we are not free to say to Congress: ‘We see what you are driving at, but you have not said it, and therefore we shall go on as before.’” *Id.*, at 597 (quoting *Johnson v. United States*, 163 F. 30, 32 (CA1 1908) (Holmes, J.)). Rather, we recognize that the language Congress uses to accomplish its objective is adapted to the circumstances it confronts.

For example, “cession” is generally what a tribe does when it conveys land to a fellow sovereign, such as the United States or another tribe. See *Mitchel v. United States*, 9 Pet. 711, 734 (1835); *e.g.*, 1856 Treaty, Art. I, 11 Stat. 699. But here, given that Congress sought direct allotment to tribe members in order to enable private ownership by both Indians and the 300,000 settlers in the territory, it would have made little sense to “cede” the lands to the United States or “restore” the lands to the “public domain,” as Congress did on other occasions. So too with a “commitment” to “compensate” the Tribe. Rather than buying land from the Creek, Congress provided for allotment to tribe members who could then “sell their land to Indians and non-Indians alike.” *Ante*, at 10; see *Hagen*, 510 U. S., at 412 (a “definite payment” is not required for disestablishment). That other allotment statutes have contained various “hallmarks” of disestablishment tells us little about Congress’s intent here. *Contra, ante*, at 12–13, and n. 5. “[W]e have never required any particular form of words” to



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disestablish a reservation. *Hagen*, 510 U. S., at 411. There are good reasons the statutes here do not include the language the Court looks for, and those reasons have nothing to do with a failure to disestablish the reservation. Respect for Congress’s work requires us to look at what it actually did, not search in vain for what it might have done or did on other occasions.

What Congress actually did here was enact a series of statutes beginning in 1890 and culminating with Oklahoma statehood that (1) established a uniform legal system for Indians and non-Indians alike; (2) dismantled the Creek government; (3) extinguished the Creek Nation’s title to the lands at issue; and (4) incorporated the Creek members into a new political community—the State of Oklahoma. These statutes evince Congress’s intent to terminate the reservation and create a new State in its place.

First, Congress supplanted the Creek legal system with a legal code and court system that applied equally to Indians and non-Indians. In 1890, Congress subjected the Indian Territory to specified federal criminal laws. Act of May 2, 1890, §31, 26 Stat. 96. For offenses not covered by federal law, Congress did what it often did when establishing a new territorial government. It provided that the criminal laws from a neighboring State, here Arkansas, would apply. §33, *id.*, at 96–97. Seven years later, Congress provided that the laws of the United States and Arkansas “shall apply to *all* persons” in Indian Territory, “*irrespective of race.*” Act of June 7, 1897 (1897 Act), 30 Stat. 83 (emphasis added). In the same Act, Congress conferred on the U. S. Courts for the Indian Territory “exclusive jurisdiction” over “all civil causes in law and equity” and “all criminal causes” for the punishment of offenses committed by “any person” in the Indian Territory. *Ibid.*

The following year, the 1898 Curtis Act “abolished” all tribal courts, prohibited all officers of such courts from ex-

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exercising “any authority” to perform “any act” previously authorized by “any law,” and transferred “all civil and criminal causes then pending” to the U. S. Courts for the Indian Territory. Act of June 27, 1898 (Curtis Act), §28, *id.*, at 504–505. In the same Act, Congress completed the shift to a uniform legal order by banning the enforcement of tribal law in the newly exclusive jurisdiction of the U. S. Courts. See §26, *id.*, at 504 (“[T]he laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory.”). Congress reiterated yet again in 1904 that Arkansas law “continued” to “embrace *all* persons and estates” in the territory—“whether Indian, freedmen, or otherwise.” Act of Apr. 28, 1904, ch. 1824, §2, 33 Stat. 573 (emphasis added). In this way, Congress replaced tribal law with local law in matters at the core of tribal governance, such as inheritance and marital disputes. See, e.g., *George v. Robb*, 4 Ind. T. 61, 64 S. W. 615, 615–616 (1901); *Colbert v. Fulton*, 74 Okla. 293, 157 P. 1151, 1152 (1916).

In addition, the Curtis Act established municipalities to govern both Indians and non-Indians. It authorized “any city or town” with at least 200 residents to incorporate. §14, 30 Stat. 499. The Act gave incorporated towns “all the powers” and “all the rights” of municipalities under Arkansas law. *Ibid.* “All male inhabitants,” including Indians, were deemed qualified to vote in town elections. *Ibid.* And “all inhabitants”—“*without regard to race*”—were made subject to “all” town laws and were declared to possess “*equal* rights, privileges, and protection.” *Id.*, at 499–500 (emphasis added). These changes reorganized the approximately 150 towns in the territory—including Tulsa, Muskogee, and 23 others within the Creek Nation’s former territory—that were home to tens of thousands of people and nearly one third of the territory’s population at the time, laying the foundation for the state governance that was to come. See H. R. Doc. No. 5, 57th Cong., 2d Sess., pt. 2, pp. 299–300,

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Table 1 (1903); Depts. of Commerce and Labor, Bureau of Census, Population of Oklahoma and Indian Territory 1907, pp. 8, 30–33.

Second, Congress systematically dismantled the governmental authority of the Creek Nation, targeting all three branches. As noted, Congress dissolved the Tribe’s judicial system. Congress also specified in the Original Creek Agreement that the Creek government would “not continue” past March 1906, essentially preserving it only as long as Congress thought necessary for the Tribe to wind up its affairs. §46, 31 Stat. 872. In the meantime, Congress radically curtailed tribal legislative authority, providing that no statute passed by the council of the Creek Nation affecting the Nation’s lands, money, or property would be valid unless approved by the President of the United States. §42, *id.*, at 872. When 1906 came around, the Five Tribes Act provided for the “final disposition of the affairs of the Five Civilized Tribes.” Act of Apr. 26, 1906, ch. 1876, 34 Stat. 137. Along with “abolish[ing]” all tribal taxes, the Act directed the Secretary of the Interior to assume control over the collection of the Nation’s remaining revenues and to distribute them among tribe members on a per capita basis. §§11, 17, *id.*, at 141, 143–144. Thus, by the time Oklahoma became the 46th State in 1907, there was little left of the Creek Nation’s authority: No tribal courts. No tribal law. No tribal fisc. And any lingering authority was further reduced in 1908, when Congress amended the Five Tribes Act to require tribal officers and members to surrender all remaining tribal property, money, and records. Act of May 27, 1908, §13, 35 Stat. 316.

The Court stresses that the Five Tribes Act separately stated that the Creek government was “continued” in “full force and effect for all purposes authorized by law.” *Ante*, at 15 (quoting §28, 34 Stat. 148). By that point, however, such “authorized” purposes were nearly nonexistent, and the Act’s statement is readily explained by the need to

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maintain a tribal body to wrap up the distribution of Creek lands. Indeed, the Court does not cite any examples of the Creek Nation exercising significant government authority in the wake of the statutes discussed above. Instead, the Court alludes to subsequent changes in the 1920s to the general “federal outlook towards Native Americans,” and it observes that in the 1930s Congress authorized the Creek Nation to reconstitute its tribal courts and adopt a constitution and bylaws. *Ante*, at 15. That, however, simply highlights the drastic extent to which Congress erased the Nation’s authority at the turn of the century.

Third, Congress destroyed the foundation of sovereignty by stripping the Creek Nation of its territory. The communal title held by the Creek Nation, which “did not recognize private property in land,” “presented a serious obstacle to the creation of [a] State.” *Choate v. Trapp*, 224 U. S. 665, 667 (1912). Well aware of this impediment, Congress established the Dawes Commission and directed it to negotiate with the Five Tribes for “the extinguishment of the national or tribal title to any lands” within the Indian Territory. Act of Mar. 3, 1893, §16, 27 Stat. 645. That extinguishment could be accomplished through “cession” of the tribal lands to the United States, “allotment” of the lands among the Indians, or any other agreed upon method. *Ibid.* The Commission initially sought cession, but ultimately sought to extinguish the title through allotment. See *ante*, at 9.

In the Original Creek Agreement of 1901, Congress did just that. The agreement provided that “[a]ll lands belonging to the Creek tribe,” except town sites and lands reserved for schools and public buildings, “shall be allotted among the citizens of the tribe.” §§2, 3, 31 Stat. 862 (emphasis added). Town sites, rather than being allotted, were made available for purchase by the non-Indians residing there. §§11–16, *id.*, at 866–867. Unclaimed lots were to be sold at public auction, with the proceeds divvied up among the

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Creeks. §§11, 14, *id.*, at 866. The agreement required that the deeds for the allotments and town site purchases convey “all right, title, and interest of the Creek Nation and of all other [Creek] citizens,” and that the deeds be executed by the leader of the Creek Nation (the “principal chief”). §23, *id.*, at 867–868. The conveyances were then approved by the Secretary of the Interior, who in turn “relinquish[ed] to the grantee . . . all the right, title, and interest of the United States” in the land. *Id.*, at 868. In this way, Congress provided for the complete termination of the Creek Nation’s interest in the lands, as well as the interests of individual Creek members apart from their personal allotments. Indeed, the language Congress used in the Original Creek Agreement resembles what the Court regards as model disestablishment language. See *ante*, at 8, 10 (looking for language evincing “the present and total surrender of all tribal interests in the affected lands” (internal quotation marks omitted)). And, making even more clear its intent to place Indian-held land under the same laws as all other property, Congress subsequently eliminated restrictions on the alienation of allotments, freeing tribe members “to sell their land to Indians and non-Indians alike.” *Ante*, at 10.

In addition, while the Original Creek Agreement did not allot lands reserved for schools and tribal buildings, the Creek Nation’s interest in those lands was subsequently terminated by the Five Tribes Act. That Act directed the Secretary of the Interior to take possession of—and sell off—“all” tribal buildings and underlying lands, whether used for “governmental” or “other tribal purposes.” §15, 34 Stat. 143. The Secretary was also ordered to assume control of all tribal schools and the underlying property until the federal or state governments established a public school system. See §10, *id.*, at 140–141.

These statutes evince a clear intent to leave the Creek Nation with no communally held land and no meaningful governing authority to exercise over the newly distributed

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parcels. Contrary to the Court’s portrayal, this is not a scenario in which Congress allowed a tribe to “continue to exercise governmental functions over land” that it “no longer own[ed] communally.” *Ante*, at 11. From top to bottom, these statutes, which divested the Tribes and the United States of their interests while displacing tribal governance, “strongly suggest[] that Congress meant to divest” the lands of reservation status. *Solem*, 465 U. S., at 470.

Finally, having stripped the Creek Nation of its laws, its powers of self-governance, and its land, Congress incorporated the Nation’s members into a new political community. Congress made “every Indian” in the Oklahoma territory a citizen of the United States in 1901—decades before conferring citizenship on all native born Indians elsewhere in the country. Act of Mar. 3, 1901, ch. 868, 31 Stat. 1447. In the Oklahoma Enabling Act of 1906—the gateway to statehood—Congress confirmed that members of the Five Tribes would participate in equal measure alongside non-Indians in the choice regarding statehood. The Act gave Indians the right to vote on delegates to a constitutional convention and ultimately on the state constitution that the delegates proposed. §§2, 4, 34 Stat. 268, 271. Fifteen members of the Five Tribes were elected as convention delegates, many of them served on significant committees, and a member of the Chickasaw Nation even served as president of the convention. See Brief for Seventeen Oklahoma District Attorneys et al. as *Amici Curiae* 9–13.

The Enabling Act also ensured that Indians and non-Indians would be subject to uniform laws and courts. It replaced Arkansas law, which had applied to all persons “irrespective of race,” 1897 Act, 30 Stat. 83, with the laws of the adjacent Oklahoma Territory until the new state legislature provided otherwise. Enabling Act §§2, 13, 21, 34 Stat. 268–269, 275, 277–278; see *Jefferson v. Fink*, 247 U. S. 288, 294 (1918). All of the pending cases in the territorial courts arising under federal law were transferred to

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the newly created U. S. District Courts of Oklahoma. See §16, 34 Stat. 276. Pending cases not involving federal law, including those that involved Indians on Indian land and had arisen under Arkansas law, were transferred to the new Oklahoma state courts. §§16, 17, 20, *id.*, at 276–277. To dispel any potential confusion about the distribution of criminal cases, Congress amended the Enabling Act the following year, clarifying that all cases for crimes that would have fallen under federal jurisdiction had they been committed in a State would be transferred to the U. S. District Courts. Act of Mar. 4, 1907, §1, *id.*, at 1286–1287. All other pending criminal cases would be “prosecuted to a final determination in the State courts of Oklahoma.” §3, *id.*, at 1287. As for civil cases, the new state courts were immediately empowered to resolve even disputes that previously lay at the core of tribal self-governance. *E.g.*, *Palmer v. Cully*, 52 Okla. 454, 463–469, 153 P. 154, 157–158 (1915) (*per curiam*) (marital dispute).<sup>4</sup>

In sum, in statute after statute, Congress made abundantly clear its intent to disestablish the Creek territory. The Court, for purposes of the disestablishment question before us, defines the Creek territory as “lands that would lie outside both the legal jurisdiction and geographic boundaries of any State” and on which a tribe was “assured a right to self-government.” *Ante*, at 6. That territory was eliminated. By establishing uniform laws for Indians and non-

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<sup>4</sup>The Court, citing *United States v. Sandoval*, 231 U. S. 28, 47–48 (1913), argues that including a tribe within a new State is not necessarily incompatible with the continuing existence of a reservation. *Ante*, at 15–16, n. 6. But the tribe in *Sandoval*, the Pueblo Indians of New Mexico, retained a rare communal title to their lands—which Congress explicitly extinguished here. 231 U. S., at 47. More fundamentally, the Court’s argument suffers from the same flaw that runs through its entire approach, which maintains that each of Congress’s actions alone would not be enough for disestablishment but never confronts the import of all of them.

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Indians alike in the new State of Oklahoma, Congress brought Creek members and the land on which they resided under state jurisdiction. By stripping the Creek Nation of its courts, lawmaking authority, and taxing power, Congress dismantled the tribal government. By extinguishing the Nation's title, Congress erased the geographic boundaries that once defined Creek territory. And, by conferring citizenship on tribe members and giving them a vote in the formation of the State, Congress incorporated them into a new political community. "Under any definition," that was disestablishment. *Ibid.*

In the face of all this, the Court claims that recognizing Congress's intent would permit disestablishment in the absence of "a statute requir[ing] that result." *Ante*, at 20. Hardly. The numerous statutes discussed above demonstrate Congress's plain intent to terminate the reservation. The Court resists the cumulative force of these statutes by attacking each in isolation, first asking whether allotment alone disestablished the reservation, then whether restricting tribal governance was sufficient, and so on. But the Court does not consider the full picture of what Congress accomplished. Far from justifying its blinkered approach, the Court repeatedly tells the reader to wait until the "*next* section" of the opinion—where the Court will again nitpick discrete aspects of Congress's disestablishment effort while ignoring the full picture our precedents require us to honor. *Ante*, at 12–13, n. 5, 17, n. 7; see *supra*, at 11, 14.

The Court also hypothesizes that Congress may have taken significant steps toward disestablishment but ultimately could not "complete[]" it; perhaps Congress just couldn't "muster the will" to finish the job. *Ante*, at 8, 15. The Court suggests that Congress sought to "tiptoe to the edge of disestablishment," fearing the "embarrassment of disestablishing a reservation" but hoping that judges would "deliver the final push." *Ante*, at 7. This is fantasy. The congressional Acts detailed above do not evince any unease



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about extinguishing the Creek domain, or any shortage of “will.” Quite the opposite. Through an open and concerted effort, Congress did what it set out to do: transform a reservation into a State. “Mustering the broad social consensus required to pass new legislation is a deliberately hard business,” as the Court reminds us. *Ibid.* Congress did that hard work here, enacting not one but a steady progression of major statutes. The Court today does not give effect to the cumulative significance of Congress’s actions, because Congress did not use explicit words of the sort the Court insists upon. But Congress had no reason to suppose that such words would be required of it, and this Court has held that they were not. See *Hagen*, 510 U. S., at 411–412; *Yankton Sioux Tribe*, 522 U. S., at 351; *Solem*, 465 U. S., at 471.

## B

Under our precedents, we next consider the contemporaneous understanding of the statutes enacted by Congress and the subsequent treatment of the lands at issue. The Court, however, declines to consider such evidence because, in the Court’s view, the statutes clearly do not disestablish any reservation, and there is no “ambiguity” to “clear up.” *Ante*, at 20 (internal quotation marks omitted). That is not the approach demanded by our precedent, *supra*, at 10–13, and, in any event, the Court’s argument fails on its own terms here. I find it hard to see how anyone can come away from the statutory texts detailed above with *certainty* that Congress had no intent to disestablish the territorial reservation. At the very least, the statutes leave some ambiguity, and thus “extratextual sources” ought to be consulted. *Ante*, at 20.

Turning to such sources, our precedents direct us to “examine all the circumstances” surrounding Congress’s actions. *Parker*, 577 U. S., at \_\_\_\_ (slip op., at 6) (quoting *Hagen*, 510 U. S., at 412). This includes evidence of the

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“contemporaneous understanding” of the status of the reservation and the “history surrounding the passage” of the relevant Acts. *Parker*, 577 U. S., at \_\_\_ (slip op., at 8) (internal quotation marks omitted); see *Yankton Sioux Tribe*, 522 U. S., at 351–354; *Solem*, 465 U. S., at 471. The available evidence overwhelmingly confirms that Congress eliminated any Creek reservation. That was the purpose identified by Congress, the Dawes Commission, and the Creek Nation itself. And that was the understanding demonstrated by the actions of Oklahoma, the United States, and the Creek.

According to reports published by Congress leading up to Oklahoma statehood, the Five Tribes had failed to hold the lands for the equal benefit of all Indians, and the tribal governments were ill equipped to handle the largescale settlement of non-Indians in the territories. See *supra*, at 4–5; *Woodward*, 238 U. S., at 296–297. The Senate Select Committee on the Five Tribes explained that it was “imperative[ ]” to “establish[ ] a government over [non-Indians] and Indians” in the territory “in accordance with the principles of our constitution and laws.” S. Rep. No. 377, at 12–13. On the eve of the Original Creek Agreement, the House Committee on Indian Affairs emphasized that “[t]he independent self-government of the Five Tribes ha[d] practically ceased,” “[t]he policy of the Government to abolish classes in Indian Territory and make a homogeneous population [wa]s being rapidly carried out,” and all Indians “should at once be put upon a level and equal footing with the great population with whom they [were] intermingled.” H. R. Rep. No. 1188, 56th Cong., 1st Sess., 1 (1900).

The Dawes Commission understood Congress’s intent in the same way. The Commission explained that the “object of Congress from the beginning has been the dissolution of the tribal governments, the extinguishment of the communal or tribal title to the land, the vesting of possession and title in severalty among the citizens of the Tribes, and the

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assimilation of the peoples and institutions of this Territory to our prevailing American standard.” H. R. Doc. No. 5, 58th Cong., 2d Sess., pt. 2, p. 5 (1903). Accordingly, the Commission’s aim—“in all [its] endeavors”—was a “uniformity of political institutions to lay the foundation for an ultimate common government.” H. R. Doc. No. 5, 56th Cong., 2d Sess., 163 (1900).

The Creek shared the same understanding. In 1893, the year Congress formed the Dawes Commission, the Creek delegation to Washington recognized that Congress’s “unwavering aim” was to “wipe out the line of political distinction between an Indian citizen and other citizens of the Republic” so that the Tribe could be “absorbed and become a part of the United States.” P. Porter & A. McKellop, Printed Statement of Creek Delegates, reprinted in Creek Delegation Documents 8–9 (Feb. 9, 1893) (quoting Senate Committee Report); see also S. Doc. No. 111, 54th Cong., 2d Sess., 5, 8 (1897) (resolution of the Creek Nation “recogniz[ing]” that Congress proposed to “disintegrat[e] the land of our people” and “transform[]” “our domestic dependent states” “into a State of the Union”).

Particularly probative is the understanding of Pleasant Porter, the principal Chief of the Creek Nation. He described Congress’s decisions to the Creek people and legislature in messages published in territorial newspapers during the run-up to statehood. Following the extinguishment of the Nation’s title, dissolution of tribal courts, and curtailment of lawmaking authority, he told his people that “[i]t would be difficult, if not impossible to successfully operate the Creek government now.” App. to Brief for Respondent 8a (Message to Creek National Council (May 7, 1901), reprinted in *The Indian Journal* (May 10, 1901)). The “remnant of a government” had been reduced to a land office for finalizing the distribution of allotments and would be “maintained only until” the Tribe’s “landed and other interests . . . have been settled.” App. to Brief for Respondent

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8a. He reiterated this understanding following the Five Tribes Act of 1906, which stated that the tribal government would “continue[] in full force and effect for all purposes authorized by law.” §28, 34 Stat. 148. While the Court believes that meant Congress decided against disestablishing the reservation, see *ante*, at 14–15, Chief Porter saw things differently. From his vantage point as the contemporaneous leader of the government at issue, Congress had temporarily continued the tribal government but left it with only “limited and circumscribed” authority: The council could “pass[] resolutions respecting our wishes” regarding the property “now in the process of distribution,” but the council no longer had any authority to “mak[e] laws for our government.” App. to Brief for Respondent 14a (Message to Creek National Council (Oct. 18, 1906), reprinted in *The New State Tribune* (Oct. 18, 1906)). Apart from distributing the Nation’s property, Chief Porter maintained that “all powers over the governing even of our landed property will cease” once the new state government was established. App. to Brief for Respondent 15a; see also S. Rep. No. 5013, 59th Cong., 2d Sess., pt. 1, p. 885 (1907) (Choctaw governor mourning that his “only” remaining authority was “to sign deeds”).

The Creek remained of that view after Oklahoma was officially made a State through the Enabling Act. At that point, the new principal Chief confirmed that it was “utterly impossible” to resume “our old tribal government.” App. to Brief for Respondent 16a–17a (Address by Moty Tiger to Creek National Council (Oct. 8, 1908), reprinted in *The Indian Journal* (Oct. 9, 1908)). And any “appeal to the government at Washington to alter its purpose to wipe out all tribal government among the five civilized tribes” would “be to no purpose.” App. to Brief for Respondent 16a. “[C]ontributions” for such efforts would be “just that much money thrown away,” and “all attorneys at Washington or else-

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where who encourage and receive any part of such contributions do it knowing that they can give no return or service for same and that they take such money fraudulently and dishonestly.” *Id.*, at 17a.<sup>5</sup>

In addition to their words, the contemporaneous actions of Oklahoma, the Creek, and the United States in criminal matters confirm their shared understanding that Congress did not intend a reservation to persist. Had the land been a reservation, the federal government—not the new State—would have had jurisdiction over serious crimes committed by Indians under the Major Crimes Act of 1885. See §9, 23 Stat. 385. Yet, at statehood, Oklahoma immediately began prosecuting serious crimes committed by Indians in the new state courts, and the federal government immediately ceased prosecuting such crimes in federal court. At argument, McGirt’s counsel acknowledged that he could not cite a single example of federal prosecutions for such crimes. Tr. of Oral Arg. 17–18. Rather, the record demonstrates that case after case was transferred to state court or filed there outright by Oklahoma after 1907—without objection by anyone. See, e.g., *Bigfeather v. State*, 7 Okla. Crim. 364, 123 P. 1026 (1912) (manslaughter); *Rollen v. State*, 7 Okla. Crim. 673, 125 P. 1087 (1912) (assault with intent to kill); *Jones v. State*, 3 Okla. Crim. 593, 107 P. 738 (1910) (murder); see also Brief for Petitioner in *Carpenter v. Murphy*, O. T. 2018, No. 17–1107, pp. 40–41 (collecting more cases).

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<sup>5</sup>The Court discounts the views of the principal chiefs as mere predictions about what Congress “*would*” do, *ante*, at 25, but the Court ignores statements made after statehood, describing what Congress *did* do. The Court also asserts that the chiefs’ views cannot serve as “evidence” of the “meaning” of laws enacted by Congress. *Ante*, at 25, n. 12. That is inconsistent with our precedent, which specifically instructs us to determine Congress’s intent by considering the “understanding of the status of the reservation by members” of the affected tribe. *Parker*, 577 U. S., at \_\_\_\_ (slip op., at 6). The contemporaneous understanding of the leaders of the tribe is highly probative.

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These prosecutions were lawful, the Oklahoma Supreme Court recognized at the time, because Congress had not intended to “except out of [Oklahoma] an Indian reservation” upon its admission as a State. *Higgins v. Brown*, 20 Okla. 355, 419, 94 P. 703, 730 (1908).

Instead of explaining how everyone at the time somehow missed that a reservation still existed, the Court resorts to misdirection. It observes that Oklahoma state courts have held that they erroneously entertained prosecutions for crimes committed by Indians on the small number of remaining restricted allotments and tribal trust lands from the 1930s until 1989. But this Court has not addressed that issue, and regardless, it would not tell us whether the State properly prosecuted major crimes committed by Indians on the lands at issue here—the unrestricted fee lands that make up more than 95% of the Creek Nation’s former territory. Perhaps most telling is that the State’s jurisdiction over crimes on Indian allotments was hotly contested from an early date, whereas nobody raised objections based on a surviving reservation. See, e.g., *Ex parte Nowabbi*, 60 Okla. Crim. 111, 61 P. 2d 1139 (1936), overruled by *State v. Klindt*, 782 P. 2d 401, 404 (Okla. Crim. App. 1989); see also *ante*, at 21 (“no court” suggested the “possibility” that “the Creek lands really were part of a reservation” until 2017).<sup>6</sup>

Lacking any other arguments, the Court suspects uniform lawlessness: The State must have “overstepped its authority” in prosecuting thousands of cases for over a century. *Ante*, at 23. Perhaps, the Court suggests, the State

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<sup>6</sup>The Court claims that the Oklahoma courts’ reasons for treating restricted allotments as Indian country must apply with “equal force” to the unrestricted fee lands at issue here, but the Court ultimately admits the two types of land are “legally distinct.” *Ante*, at 23, n. 10. And any misstep with regard to the small number of restricted allotments hardly means the Oklahoma courts made the far more extraordinary mistake of failing to notice that the Five Tribes’ reservations—encompassing 19 million acres—continued to exist.

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lacked “good faith.” *Ibid.* In the Court’s telling, the federal government acquiesced in this extraordinary alleged power grab, abdicating its responsibilities over the purported reservation. And, all the while, the state and federal courts turned a blind eye.

But we normally presume that government officials exercise their duties in accordance with the law. Certainly the presumption may be strained from time to time in this area, but not so much as to justify the Court’s speculations, which posit that government officials at every level either conspired to violate the law or uniformly misunderstood the fundamental structure of their society and government. Whatever the imperfections of our forebears, neither option seems tenable. And it is downright inconceivable that this could occur without prompting objections—from anyone, including from the Five Tribes themselves. Indians frequently asserted their rights during this period. The cases above, for example, involve criminal appeals brought by Indians, and Indians raised numerous objections to land graft in the former Territory. See Brief for Historians et al. as *Amici Curiae* 28–31. Yet, according to the extensive record compiled over several years for this case and a similar case, *Sharp v. Murphy*, *post*, p. \_\_\_\_ (*per curiam*), Indians and their counsel did not raise a single objection to state prosecutions on the theory that the lands at issue were still a reservation. It stretches the imagination to suggest they just missed it.

## C

Finally, consider “the subsequent treatment of the area in question and the pattern of settlement there.” *Yankton Sioux Tribe*, 522 U. S., at 344. This evidence includes the “subsequent understanding of the status of the reservation by members and nonmembers as well as the United States and the [relevant] State,” and the “subsequent demographic history” of the area. *Parker*, 577 U. S., at \_\_\_\_, \_\_ (slip op.,

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at 6, 10); see *Solem*, 465 U. S., at 471. Each of the indicia from our precedents—subsequent treatment by Congress, the State’s unquestioned exercise of jurisdiction, and demographic evidence—confirms that the Creek reservation did not survive statehood.

First, “Congress’ own treatment of the affected areas” strongly supports disestablishment. *Id.*, at 471. After statehood, Congress enacted several statutes progressively eliminating restrictions on the alienation and taxation of Creek allotments, and Congress subjected even restricted lands to state jurisdiction. Since Congress had already destroyed nearly all tribal authority, these statutes rendered Creek parcels little different from other plots of land in the State. See Act of May 27, 1908, 35 Stat. 312; Act of June 14, 1918, 40 Stat. 606; Act of Apr. 10, 1926, 44 Stat. 239. This is not a scenario where Congress merely opened land for “purchase . . . by non-Indians” while allowing the Tribe to “continue to exercise governmental functions over [the] land,” *ante*, at 11, and n. 3; rather, Congress eliminated both restrictions on the lands here and the Creek Nation’s authority over them. Such developments would be surprising if Congress intended for all of the former Indian Territory to be reservation land insulated from state jurisdiction in significant ways. The simpler and more likely explanation is that they reflect Congress’s understanding through the years that “all Indian reservations as such have ceased to exist” in Oklahoma, S. Rep. No. 1232, 74th Cong., 1st Sess., 6 (1935), and that “Indian reservations [in the Indian Territory] were destroyed” when “Oklahoma entered the union,” S. Rep. No. 101–216, p. 47 (1989).

That understanding is now woven throughout the U. S. Code, which applies numerous statutes to the land here by extending them to the “*former* reservation[s]” “in Oklahoma”—underscoring that no reservation exists today. 25 U. S. C. §2719(a)(2)(A)(i) (emphasis added) (Indian Gaming



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Regulatory Act); see Brief for United States as *Amicus Curiae* 23; 23 U. S. C. §202(b)(1)(B)(v) (road grants; “former Indian reservations in the State of Oklahoma”); 25 U. S. C. §1452(d) (Indian Financing Act; “former Indian reservations in Oklahoma”); §2020(d) (education grants; “former Indian reservations in Oklahoma”); §3103(12) (National Indian Forest Resources Management Act; “former Indian reservations in Oklahoma”); 29 U. S. C. §741(d) (American Indian Vocational Rehabilitation Services Act; “former Indian reservations in Oklahoma”); 33 U. S. C. §1377(c)(3)(B) (waste treatment grants; “former Indian reservations in Oklahoma”); 42 U. S. C. §5318(n)(2) (urban development grants; “former Indian reservations in Oklahoma”).<sup>7</sup>

Second, consider the State’s “exercis[e] [of] unquestioned jurisdiction over the disputed area since the passage of” the Enabling Act, which deserves “weight” as “an indication of the intended purpose of the Act.” *Rosebud Sioux Tribe*, 430 U. S., at 599, n. 20, 604. As discussed above, for 113 years, Oklahoma has asserted jurisdiction over the former Indian

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<sup>7</sup>The Court suggests that these statutes only show that there are some “former reservations” in Oklahoma, not that the Five Tribes’ former domains are necessarily among them. *Ante*, at 27, n. 14. History says otherwise. For example, the Five Tribes actively lobbied for inclusion of this language in the Indian Gaming Regulatory Act. See Hearing on S. 902 et al. before the Senate Select Committee on Indian Affairs, 99th Cong., 2d Sess., 299–300 (1986). They observed that the term “reservation,” as originally defined, did not pertain to the “eastern Oklahoma tribes, including the Five Civilized Tribes.” *Ibid.* (statement of Charles Blackwell, representative of the Chickasaw Nation of Oklahoma). Accordingly, they “recommend[ed] inclu[ding] . . . the wording ‘or in the case of Oklahoma tribes, their *former* jurisdictional and/or reservation boundaries in Oklahoma.’” *Id.*, at 300 (emphasis added). The National Indian Gaming Association, which proposed the language on which the final act was ultimately modeled, made the same point, observing that in Oklahoma “reservation boundaries have been extinguished for most purposes” so the statute should refer to “former reservation[s] in Oklahoma.” *Id.*, at 312 (Memorandum from the National Indian Gaming Assn. to the Senate Select Committee on Indian Affairs (June 17, 1986)).

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Territory on the understanding that it is not a reservation, without any objection by the Five Tribes until recently (or by McGirt for the first 20 years after his convictions). See Brief for Respondent 4, 40. The same goes for major cities in Oklahoma. Tulsa, for example, has exercised jurisdiction over both Indians and non-Indians for more than a century on the understanding that it is not a reservation. See Brief for City of Tulsa as *Amicus Curiae* 27–28.

All the while, the federal government has operated on the same understanding. Brief for United States as *Amicus Curiae* 24. No less than Felix Cohen, whose authoritative treatise the Court repeatedly cites, agreed while serving as Acting Solicitor of the Interior in 1941 that “all offenses by or against Indians” in the former Indian Territory “are subject to State laws.” App. to Supp. Reply Brief for Petitioner in *Carpenter v. Murphy*, O. T. 2018, No. 17–1107, p. 1a (Memorandum for Commissioner of Indian Affairs (July 11, 1941)). In the view of the Department of the Interior, such state jurisdiction was appropriate because the reservations in the Territory “lost their character as Indian country” by the time Oklahoma became a State. App. to Brief for United States as *Amicus Curiae* 4a (Letter from O. Chapman, Assistant Secretary of the Interior, to the Attorney General (Aug. 17, 1942)); see also *supra*, at 28, n. 6.

Indeed, far from disputing Oklahoma’s jurisdiction, the Five Tribes themselves have repeatedly and emphatically agreed that no reservation exists. After statehood, tribal leaders and members frequently informed Congress that “there are no reservations in Oklahoma.” App. to Brief for Respondent 19a (Testimony of Hon. Bill Anoatubby, Governor, Chickasaw Nation, Hearings before the Subcommittee on Indian, Insular and Alaska Native Affairs of the House Committee on Natural Resources (Feb. 24, 2016)).<sup>8</sup> They

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<sup>8</sup>See App. to Brief for Respondent 18a–19a (excerpting various statements before Congress, including: “[w]e are not a reservation tribe”

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took the same position before federal courts. Before this litigation started, the Creek Nation represented to the Tenth Circuit that there is only “‘checkerboard’ Indian country within its *former* reservation boundaries.” Reply Brief in No. 09–5123, p. 5 (emphasis added). And the Nation never once contended in this Court that a sprawling reservation still existed in the more than a century that preceded the present disputes.

Like the Creek, this Court has repeatedly described the area in question as the “former” lands of the Creek Nation. See *Grayson v. Harris*, 267 U. S. 352, 353 (1925) (lands “lying within the former Creek Nation”); *Woodward*, 238 U. S., at 285 (lands “formerly part of the domain of the Creek Nation”); *Washington v. Miller*, 235 U. S. 422, 423 (1914) (lands “within what until recently was the Creek Nation”). Yet today the Court concludes that the lands have been a Creek reservation all along—contrary to the position shared for the past century by this Court, the United States, Oklahoma, and the Creek Nation itself.

Under our precedent, Oklahoma’s unquestioned, century-long exercise of jurisdiction supports the conclusion that no reservation persisted past statehood. See *Yankton Sioux Tribe*, 522 U. S., at 357; *Hagen*, 510 U. S., at 421; *Rosebud Sioux Tribe*, 430 U. S., at 604–605. “Since state jurisdiction over the area within a reservation’s boundaries is quite limited, the fact that neither Congress nor the Department of Indian Affairs has sought to exercise its authority over this area, or to challenge the State’s exercise of authority is a

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(Principal Cherokee Chief, 1982), “Oklahoma, . . . of course, is not a reservation State” (Chickasaw Governor, 1988), “Oklahoma is not [a reservation State]” and “[w]e have no surface reservations in Oklahoma” (Chickasaw advisor, 2011), as well as references to the boundaries and lands of “former reservation[s]” (Chickasaw nominee for Assistant Secretary of Indian Affairs, 2012; Inter-Tribal Council of the Five Civilized Tribes, 2016)).

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factor entitled to weight as part of the ‘jurisdictional history.’” *Id.*, at 603–604 (citations omitted).

Third, consider the “subsequent demographic history” of the lands at issue, which provides an “‘additional clue’” as to the meaning of Congress’s actions. *Parker*, 577 U. S., at \_\_\_ (slip op., at 10) (quoting *Solem*, 465 U. S., at 472). Continuing from statehood to the present, the population of the lands has remained approximately 85%–90% non-Indian. See Brief for Respondent 43; *Murphy v. Royal*, 875 F. 3d 896, 965 (CA10 2017). “[T]hose demographics signify a diminished reservation.” *Yankton Sioux Tribe*, 522 U. S., at 357. The Court questions whether the consideration of demographic history is appropriate, *ante*, at 18–19, 27, but we have determined that it is a “necessary expedient.” *Solem*, 465 U. S., at 472, and n. 13 (emphasis added); see *Parker*, 577 U. S., at \_\_\_ (slip op., at 10). And for good reason. Our precedents recognize that disestablishment cases call for a wider variety of tools than more workaday questions of statutory interpretation. *Supra*, at 12. In addition, the use of demographic data addresses the practical concern that “[w]hen an area is predominately populated by non-Indians with only a few surviving pockets of Indian allotments, finding that the land remains Indian country seriously burdens the administration of state and local governments.” *Solem*, 465 U. S., at 471–472, n. 12.

Here those burdens—the product of a century of settled understanding—are extraordinary. Most immediately, the Court’s decision draws into question thousands of convictions obtained by the State for crimes involving Indian defendants or Indian victims across several decades. This includes convictions for serious crimes such as murder, rape, kidnapping, and maiming. Such convictions are now subject to jurisdictional challenges, leading to the potential release of numerous individuals found guilty under state law

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of the most grievous offenses.<sup>9</sup> Although the federal government may be able to re prosecute some of these crimes, it may lack the resources to re prosecute all of them, and the odds of convicting again are hampered by the passage of time, stale evidence, fading memories, and dead witnesses. See Brief for United States as *Amicus Curiae* 37–39. No matter, the court says, these concerns are speculative because “many defendants may choose to finish their state sentences rather than risk re prosecution in federal court.” *Ante*, at 38. Certainly defendants like McGirt—convicted of serious crimes and sentenced to 1,000 years plus life in prison—will not adopt a strategy of running out the clock on their state sentences. At the end of the day, there is no escaping that today’s decision will undermine numerous convictions obtained by the State, as well as the State’s ability to prosecute serious crimes committed in the future.

Not to worry, the Court says, only about 10%–15% of Oklahoma citizens are Indian, so the “majority” of prosecutions will be unaffected. *Ibid*. But the share of serious crimes committed by 10%–15% of the 1.8 million people in eastern Oklahoma, or of the 400,000 people in Tulsa, is no small number.

Beyond the criminal law, the decision may destabilize the governance of vast swathes of Oklahoma. The Court, despite briefly suggesting that its decision concerns only a narrow question of criminal law, ultimately acknowledges that “many” federal laws, triggering a variety of rules, spring into effect when land is declared a reservation. *Ante*, at 39–40.

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<sup>9</sup>The Court suggests that “well-known” “procedural obstacles” could prevent challenges to state convictions. *Ante*, at 38. But, under Oklahoma law, it appears that there may be little bar to state habeas relief because “issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal.” *Murphy v. Royal*, 875 F. 3d 896, 907, n. 5 (CA10 2017) (quoting *Wallace v. State*, 935 P. 2d 366, 372 (Okla. Crim. App. 1997)).

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State and tribal authority are also transformed. As to the State, its authority is clouded in significant respects when land is designated a reservation. Under our precedents, for example, state regulation of even non-Indians is preempted if it runs afoul of federal Indian policy and tribal sovereignty based on a nebulous balancing test. This test lacks any “rigid rule”; it instead calls for a “particularized inquiry into the nature of the state, federal, and tribal interests at stake,” contemplated in light of the “broad policies that underlie” relevant treaties and statutes and “notions of sovereignty that have developed from historical traditions of tribal independence.” *White Mountain Apache Tribe v. Bracker*, 448 U. S. 136, 142, 144–145 (1980). This test mires state efforts to regulate on reservation lands in significant uncertainty, guaranteeing that many efforts will be deemed permissible only after extensive litigation, if at all.<sup>10</sup>

In addition to undermining state authority, reservation status adds an additional, complicated layer of governance over the massive territory here, conferring on tribal government power over numerous areas of life—including powers over non-Indian citizens and businesses. Under our precedents, tribes may regulate non-Indian conduct on reservation land, so long as the conduct stems from a “consensual

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<sup>10</sup>See, e.g., *White Mountain Apache Tribe*, 448 U. S., at 148–151 (barring State from imposing motor carrier license tax and fuel use taxes on non-Indian logging companies that harvested timber on a reservation); *Warren Trading Post Co. v. Arizona Tax Comm’n*, 380 U. S. 685, 690–692 (1965) (barring State from taxing income earned by a non-Indian who operated a trading post on a reservation); *New Mexico v. Mescalero Apache Tribe*, 462 U. S. 324, 325 (1983) (barring State from regulating hunting and fishing by non-Indians on a reservation); see also *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U. S. 408, 448 (1989) (opinion of Stevens, J.) (arguing that it is “impossible to articulate precise rules that will govern whenever a tribe asserts that a land use approved by a county board is pre-empted by federal law”).